

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CRIMINAL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, September 4, 2015.]

In re A.S., S220280. (H039825; 227 Cal.App.4th 400; Santa Clara County Superior Court; JV39630.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. The court limited review to the following issue: Must no-contact probation conditions be modified to explicitly include a knowledge requirement?

In re Alatraste, S214652. (B248072; 220 Cal.App.4th 1232; Los Angeles County Superior Court; BA344055.) Petition for review after the Court of Appeal denied petitions for writ of habeas corpus.

In re Bonilla, S214960. (B248199; 220 Cal.App.4th 1232; Los Angeles County Superior Court; BA320049.) Petitions for review after the Court of Appeal denied petitions for writ of habeas corpus.

Alatraste and *Bonilla* include the following issues: (1) Did Senate Bill 260 (Reg. Sess. 2013-2014), which includes provisions for a parole suitability hearing after a maximum of 25 years for most juvenile offenders serving life sentences, render moot any claim that such a sentence violates the Eighth Amendment to the federal Constitution and that the petitioner is entitled to a new sentencing hearing applying the mitigating factors for such juvenile offenders set forth in *Miller v. Alabama* (2012) 567 U.S. ____ [132 S.Ct. 2455]? If not: (2) Does *Miller* apply retroactively on habeas corpus to a prisoner who was a juvenile at the time of the commitment offense and who is presently serving a sentence that is the functional equivalent of life without the possibility of parole? (3) Is a total term of imprisonment of 77 years to life (*Alatraste*) or 50 years to life (*Bonilla*) for murder committed by a 16-year-old offender the functional equivalent of life without possibility of parole by denying the offender a meaningful opportunity for release on parole? (4) If so, does the sentence violate the Eighth Amendment absent consideration of the mitigating factors for juvenile offenders set forth in *Miller*?

People v. Aranda, S214116. (E056708; 219 Cal.App.4th 764; Riverside County Superior Court; RIF154701.) Petition for review after the Court of Appeal affirmed an order dismissing one count and remanding for further proceedings. This case presents the following issue: Did the Court of Appeal err by holding that double jeopardy prevents retrial of defendant for first degree murder where the jury did not return a verdict on that offense and deadlocked on the lesser included offenses of second degree murder and voluntary manslaughter, because the trial court failed to afford the jury an opportunity to return a partial acquittal on the charge of first degree murder? (See *Blueford v. Arkansas* (2012) 566 U.S. ____ [132 S.Ct. 2044]; *Stone v. Superior Court* (1982) 31 Cal.3d 503.)

People v. Arroyo, S219178. (G048659; 225 Cal.App.4th 1378; Orange County Superior Court; 12ZF0158.) Petition for review after the Court of Appeal reversed an order sustaining a demurrer to an indictment in a criminal case. This case presents the following issue: May the criminal prosecution of a juvenile offender under Welfare and Institutions Code section 707, subdivision (d), be commenced by grand jury indictment or only by the filing of an information after a preliminary hearing?

People v. Buza, S223698. (A125542; 231 Cal.App.4th 1446; San Francisco County Superior Court; 207818.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does the compulsory collection of a biological sample from all adult felony arrestees for purposes of DNA testing (Pen. Code, §§ 296, subd. (a)(2)(C); 296.1, subd. (a)(1)(A)) violate the Fourth Amendment to the United States Constitution or article I, section 13, of the California Constitution?

People v. Canizales, S221958. (E054056; 229 Cal.App.4th 820; San Bernardino County Superior Court; FVA1001265.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. This case presents the following issue: Was the jury properly instructed on the “kill zone” theory of attempted murder?

People v. Castellolopez, S218861. (D063394; 225 Cal.App.4th 638; San Diego County Superior Court; SCD242311.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Was defendant’s possession of a concealed and opened pocketknife with the blade in its fully extended position sufficient to sustain his conviction for carrying a concealed dirk or dagger in violation of Penal Code section 21310?

People v. Chaney, S223676. (C073949; 231 Cal.App.4th 1391; Amador County Superior Court; 05CR08104.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court limited review to the following issue: Does the definition of “unreasonable risk of danger to public safety” (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply retroactively to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)? (See also *People v. Valencia*, S223825.)

People v. Conley, S211275. (C070272; 215 Cal.App.4th 1482; Yolo County Superior Court; CRF113234.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does the Three Strikes Reform Act of 2012 (Pen. Code, §§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C)), which reduces punishment for certain non-violent third-strike offenders, apply retroactively to a defendant who was sentenced before the Act’s effective date but whose judgment was not final until after that date?

People v. Cortez, S211915. (B233833; nonpublished opinion; Los Angeles County Superior Court; BA345971.) Petition for review after the Court of Appeal affirmed and reversed judgments of conviction of criminal offenses. This case presents the following issue: Did the Court of Appeal err by reversing the conviction of defendant Cortez due to error in admitting a statement made by defendant Bernal to his nephew, error in instructing the jury with CALCRIM No. 361, and prosecutorial misconduct?

People v. Espinoza, S224929. (H039219; 233 Cal.App.4th 914; Santa Clara County Superior Court; CC954850.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did the trial court err in continuing trial in defendant's absence without a valid waiver of his trial rights or appointment of counsel after defendant, who was out of custody and representing himself, voluntarily failed to appear for his ongoing trial? (2) Was reversal required because the trial court refused to grant defendant a one-day continuance after it granted his motion during jury selection to represent himself?

People v. Franklin, S217699. (A135607; 224 Cal.App.4th 296; Contra Costa County Superior Court; 51103019.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Did defendant's sentence of 50 years to life for a homicide committed when he was a juvenile violate the Eighth Amendment? (2) Was the first issue rendered moot by the enactment of Penal Code section 3051?

People v. Friday, S218288. (H039404; 225 Cal.App.4th 8; Santa Clara County Superior Court; C1240683.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense.

People v. Garcia, S218197. (H039603; 224 Cal.App.4th 1283; Santa Clara County Superior Court; C1243927.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

People v. Klatt, S218755. (H038755; 225 Cal.App.4th 906; Santa Clara County Superior Court; C1094633.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

Friday, *Garcia*, and *Klatt* present the following issue: Are the conditions of probation mandated by Penal Code section 1203.067, subdivision (b), for persons convicted of specified felony sex offenses — including waiver of the privilege against self-incrimination, required participation in polygraph examinations, and waiver of the psychotherapist–patient privilege — constitutional?

People v. Fuentes, S219109. (G048563; 225 Cal.App.4th 1283; Orange County Superior Court; 13NF0928.) Petition for review after the Court of Appeal remanded for further proceedings and otherwise affirmed an order dismissing an enhancement allegation in a criminal case. This case presents the following issue: Does the trial court have the power under Penal Code section 1385 to dismiss a Penal Code section 186.22 enhancement for gang-related crimes, or is the court limited to striking the punishment for the enhancement in accordance with subdivision (g) of section 186.22?

People v. Garcia, S218233. (D062659; 224 Cal.App.4th 1310; San Diego County Superior Court; SCN291820.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Did defendant commit two burglaries, or only one burglary, when he entered the business with the intent to commit a robbery, then took the robbery victim to the bathroom in the back of the business with the intent to rape her?

Gomez v. Superior Court, S223799. (H039679; nonpublished opinion; Monterey County Superior Court; HC4944.) Petition for review after the Court of Appeal denied a petition for writ of mandate. This case presents the following issue: Was defendant entitled to file a single motion to disqualify (Code Civ. Proc., § 170.1, subd. (a)(6)(A)) all judges in the Monterey County Superior Court from presiding at an evidentiary hearing to determine whether a sitting judge (a former prosecutor) failed to disclose material evidence under *Brady v. Maryland* (1963) 373 U.S. 83?

People v. Gonzalez, S223763. (E059859; 232 Cal.App.4th 151; Riverside County Superior Court; INF1300854.) Petition for review after the Court of Appeal reversed an order dismissing counts in a criminal case. This case presents the following issue: Can nonverbal, threatening gestures constitute a “statement, made verbally, in writing, or by means of an electronic communication device” as required for making a criminal threat in violation of Penal Code section 422?

People v. Goolsby, S216648. (E052297; 222 Cal.App.4th 1323; San Bernardino County Superior Court; FSB905099.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Did the Court of Appeal err in holding that Penal Code section 654 and *Kellett v. Superior Court* (1966) 63 Cal.2d 822 prohibited retrying defendant on a lesser related offense, when the prosecution had not formally charged him with the lesser offense but the jury was instructed on it without objection?

People v. Hood, S217462. (D063560; 223 Cal.App.4th 1356; San Diego County Superior Court; BC488397.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did the People’s failure to plead and prove that defendant was on probation when he committed his current offenses preclude application of the absolute bar to probation set forth in Penal Code section 1203, subdivision (k)? (2) Should *People v. Lo Cicero* (1969) 71 Cal.2d 1186 be overruled?

People v. Hubbard, S216444. (B239519; nonpublished opinion; Los Angeles County Superior Court; SA075027.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 424 apply only to public officers who are charged with the receipt, safekeeping, transfer, or disbursement of public moneys, or does the statute apply to a public officer who authorizes the disbursement of public funds even if the actual authority to approve the disbursement lies elsewhere?

People v. Ikeda, S209192. (B238600; 213 Cal.App.4th 326; Ventura County Superior Court; 2011007697.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) After detaining a person outside a hotel room, may law enforcement officers enter the detainee's room to conduct a protective sweep under *Maryland v. Buie* (1990) 494 U.S. 325 based on a reasonable suspicion the room harbors a person posing a danger to officer safety? (2) Did law enforcement officers have reasonable suspicion in this case to believe defendant's hotel room harbored a person who posed a danger to officer safety?

People v. Juarez, S219889. (G049037, G049038; 227 Cal.App.4th 1138; Orange County Superior Court; 12CF3528.) Petition for review after the Court of Appeal reversed an order dismissing a criminal prosecution. This case presents the following issue: Does Penal Code section 1387 require dismissal of a criminal complaint if two prior complaints have been dismissed but the third complaint charges that the identical criminal act violates a different section of the Penal Code than had the two previous complaints?

People v. Lowe, S215727. (D059007; 221 Cal.App.4th 1276; Riverside County Superior Court; RIF132717.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 296, which permits the collection of DNA from certain felony arrestees, violate the Fourth Amendment under the analysis of *Maryland v. King* (2013) __ U.S. __ [133 S.Ct. 1958]?

Maas v. Superior Court, S225109. (D064639; 232 Cal.App.4th 169; San Diego County Superior Court; SCE185960, SCE188460.) Review ordered on the court's own motion after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does Code of Civil Procedure section 170.6 permit a peremptory challenge to be asserted, before an order to show cause has issued, against a judge who is assigned to assess a petition for writ of habeas corpus?

People v. Macabeo, S221852. (B248316; 229 Cal.App.4th 486; Los Angeles County Superior Court; YA084963.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) May law enforcement officers conduct a search incident to the *authority* to arrest for a minor traffic offense, so long as a custodial arrest (even for an unrelated crime) follows? (2) Did *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473, 189 L.Ed.2d 430] require the exclusion of evidence obtained during the warrantless search of the suspect's cell phone incident to arrest, or did the search fall within the good faith exception to the exclusionary rule (see *Davis v. United States* (2011) 564 U.S. __ [131 S.Ct. 2419, 180 L.Ed.2d 285]) in light of *People v. Diaz* (2011) 51 Cal.4th 84?

People v. Martinez, S219970. (E057976; 226 Cal.App.4th 1156; San Bernardino County Superior Court; FMB1200197.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of a criminal offense. This case presents the following issue: Can a defendant, who is convicted of hit-and-run and sentenced to prison rather than placed on probation, be required to pay restitution for the injuries the victim suffered in the collision?

People v. Morales, S228030. (G051142; 238 Cal.App.4th 42; Orange County Superior Court; 13WF3934.) Petition for review after the Court of Appeal remanded in part and otherwise affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Can excess custody credits be used to reduce or eliminate the one-year parole period required by Penal Code section 1170.18, subdivision (d), upon resentencing under Proposition 47?

People v. Moran, S215914. (H039330; nonpublished opinion; Santa Clara County Superior Court; C1243366.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Was the condition of probation barring defendant from all Home Depot stores and their parking lots after he was convicted of shoplifting at a single Home Depot store unconstitutionally overbroad as impinging on his constitutional right to travel?

People v. Patterson, S225193. (E060758; nonpublished opinion; Riverside County Superior Court; RIF1201642.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant entitled to withdraw his plea (Pen. Code, § 1018) because his trial counsel assertedly provided constitutionally inadequate assistance of counsel during plea negotiations by failing to investigate and advise defendant of the immigration consequences of his plea?

In re Patterson, S225194. Original proceeding. The court issued an order to show cause why petitioner is not entitled to relief due to alleged constitutionally inadequate assistance of counsel with respect to the immigration consequences of his plea.

People v. Pennington, S222227. (B249482; 229 Cal.App.4th 1376; Santa Barbara County Superior Court; 1423213.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Did the People prove that the named victim, a harbor patrol officer for the City of Santa Barbara Waterfront Department, is a peace officer within the meaning of Penal Code section 243, subdivision (b), supporting defendant's conviction for battery on a peace officer?

In re Richards, S223651. Original proceeding. The court issued an order to show cause why relief should not be granted on the ground that petitioner was convicted on the basis of false evidence as defined in Penal Code section 1473, subdivision (e).

People v. Rinehart, S222620. (C074662; 230 Cal.App.4th 419; Plumas County Superior Court; M1200659.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does the Mining Act of 1872 (30 U.S.C. § 22 et seq.) preempt California Fish and Game Code sections 5653 and 5653.1 with respect to the use of vacuum and suction dredging equipment?

People v. Robinson, S220247. (G048155; 227 Cal.App.4th 387; Orange County Superior Court; 11WF0857.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Is misdemeanor sexual battery (Pen. Code, § 243.4, subd. (e)(1)) a lesser included offense of sexual battery by fraudulent representation (Pen. Code, § 243.4, subd. (c))?

People v. Rodriguez, S223129. (H038588; 231 Cal.App.4th 288; Santa Clara County Superior Court; C1110340.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: When the prosecution refiled charges after defendant's motion to suppress evidence was granted and the case was dismissed, did the trial court err in refusing to assign a subsequent suppression motion to "the same judge who granted the [prior] motion" in accordance with Penal Code section 1538.5, subdivision (p), on the ground the prior judge was not "available" to hear the motion when he was then sitting in a different courthouse?

People v. Sanchez, S216681. (G047666; 223 Cal.App.4th 1; Orange County Superior Court; 11CF2839.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant's Sixth Amendment right to confrontation violated by the gang expert's reliance on testimonial hearsay (*Crawford v. Washington* (2004) 541 U.S. 36)?

People v. Schaeffer, S205260. (E053499; 208 Cal.App.4th 1; Riverside County Superior Court; RIF1102208.) Petition for review after the Court of Appeal remanded in part and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: In a case involving possession of drugs and misdemeanor drug use, could the trial court, as a condition of probation, require defendant to "[r]eside at a residence approved by the Probation Officer and not move without his/her prior approval"?

People v. Stevens, S209643. (B241356; 213 Cal.App.4th 1301; San Luis Obispo County Superior Court; F471357.) Petition for review after the Court of Appeal affirmed an order of commitment as a mentally disordered offender. The court limited review to the following issue: May an expert's testimony in support of a defendant's commitment under the Mentally Disordered Offender Act (Pen. Code § 2960 et seq.) that the defendant used force or violence in committing the commitment offense (Pen. Code § 2962, subd. (e)(P)) and that he received treatment for at least 90 days in the year before being paroled (Pen. Code § 2962, subd. (c)) be based entirely on hearsay?

People v. Superior Court (Smith), S225562. (G050827; nonpublished opinion; Orange County Superior Court; M-9531.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court limited review to the following issues: (1) Is an expert retained by the prosecution in a proceeding under the Sexually Violent Predator Act entitled to review otherwise confidential treatment information under Welfare and Institutions Code section 5328? (2) Is the district attorney entitled to review medical and psychological treatment records or is access limited to confidential treatment information contained in an updated mental evaluation conducted under Welfare and Institutions Code section 6603, subdivision (c)(1)?

People v. Valencia, S223825. (F067946; 232 Cal.App.4th 514; Tuolumne County Superior Court; CRF30714.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. This case presents the following issue: Does the definition of "unreasonable risk of danger to public safety" (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 ("the Safe Neighborhoods and Schools Act") apply to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)? (See also *People v. Chaney*, S223676.)

People v. Wade, S224599. (B255894; 234 Cal.App.4th 265; Los Angeles County Superior Court; BA421048.) Petition for review after the Court of Appeal reversed an order of dismissal of a criminal proceeding. This case presents the following issue: Is a defendant carrying a firearm "on his person" within the meaning of Penal Code section 25850, subdivision (a), if he is wearing a backpack containing a firearm?